

BOARD OF EQUALIZATION

SALES AND USE TAX REGULATIONS

Regulation 1670. GIFTS, MARKETING AIDS, PREMIUMS AND PRIZES.

References: Sections 6007-6009, 6015, Revenue and Taxation Code.

Charitable Organizations, see Regulation 1570.

Exemption Certificates, see Regulation 1667.

"Free" Meals, see Regulation 1603.

(a) GIFTS. Persons who make gifts of property to others are the consumers of the property and the tax applies with respect to the sale of the property to such persons.

(b) MARKETING AIDS. The tax applies to sales of advertising material, display cases, counter display cards, racks, and other similar marketing aids to persons acquiring such property for use in selling other property to customers. A marketing aid is deemed to be "sold" if a consideration at least equivalent to 50 percent of the purchase price of the aid is obtained from the customer, either by the making of a separate charge or by increasing the regular sales price of other merchandise sold to the customer and delivered with the marketing aid.

Manufacturers or others who provide marketing aids to persons engaged in selling their products without obtaining reimbursement equivalent to 50 percent of the purchase price of the aid are deemed to be the consumers of the property provided. In such case the sales tax applies to the sale to or the use tax applies to the use by the manufacturer or other person purchasing the aid for distribution whether it is delivered directly to the person engaged in selling its product or is delivered to a distributor, wholesaler, or jobber for redelivery to such person with "deal merchandise." Distributors, wholesalers, or jobbers are the retailers of aids which they "sell" to persons engaged in marketing their products.

(c) PREMIUM DELIVERED WITH GOODS SOLD. When a person delivers tangible personal property as a premium together with other merchandise sold, and the obtaining of the premium by the purchaser is certain and not dependent upon chance or skill, the transaction is a sale of both articles. Tax applies to the gross receipts received from the purchaser for the goods and the premium except when the premium is delivered along with a food product for human consumption or other exempt item. In such case tax applies to the gross receipts from the sale of the premium, which will be regarded as the cost of the premium to the retailer, in the absence of any evidence that the retailer is receiving a larger sum. If there is no such evidence, and if sales tax or use tax has been paid measured by the sale price of the premiums to the retailer, no further tax is due.

(d) PRIZES. The operator of a game who delivers a prize to each customer is regarded as the retailer of the merchandise delivered as prizes, and the tax applies to the operator's total gross receipts. The awarding of such prizes is not regarded as dependent upon chance or skill, inasmuch as the customer for each game played is certain to receive a prize. Similarly, the tax applies to the entire receipts from operators of "grab bag" concessions by which the customer always receives some tangible personal property. If the prize consists of a food product, the tax does not apply.

An operator who delivers both food items and nonfood items as prizes may take a deduction of that percentage of his total receipts which equals the percentage of the cost to him of the food items to the total cost to him of all merchandise purchased for delivery as prizes.

The operator of a game who awards property as a prize the winning of which depends upon chance or skill is the consumer of the property and tax applies with respect to the sale to or the use of the property by the operator.

Regulation 1670. (Continued)

History: Effective August 1, 1933.
Replacing Ruling No. 72, adopted as of January 1, 1945.
Amended January 8, 1947.
Amended and renumbered November 3, 1969, effective December 5, 1969.
Amended December 7, 1978, effective January 28, 1979. Amends subsection (c) to provide that no tax is due on premiums sold with a taxable commodity if sales or use tax has been paid measured by the sales price of the premiums; amends subsection (e) to delete the paragraph pertaining to sales tax reimbursement and excess tax reimbursement collected from customers on free meals.
Amended November 14, 1979, effective January 5, 1980. Added (b); changed former (b) to (c) and relettered remaining subsections.
Amended November 16, 1988, effective January 28, 1989. Paragraph (b), "Donations of Original Works of Art," has been deleted from Regulation 1670 and moved to new Regulation 1586, "Public Works of Art."

Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.